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June 7, 1993

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JUN - 7 1993

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY


Re: MM Docket 92-259

Dear Ms. Searcy:

Transmitted herewith on behalf of WSBK License, Inc., licensee of the above-referenced station, are an original and four (4) copies of its Comments in response to the Petition for Reconsideration and/or Clarification of Tribune Broadcasting Company filed on May 3, 1993.

Should you or the staff have any questions, kindly contact the undersigned.

Sincerely,


Neal J. Friedman

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20054

In the Matter of)
)
Implementation of the Cable)
Television Consumer Protection and)
Competition Act of 1992)
)
Broadcast Signal Carriage Issues)

TO: The Commission

MM Docket 92-259

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JUN 27 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF WSBK LICENSE, INC.

WSBK License, Inc. ("WSBK-TV"), licensee of WSBK-TV, Boston, Massachusetts, by its attorneys and pursuant to Section 1.429 of the Rules of the Commission hereby submits its Comments in response to the Petition for Reconsideration and/or Clarification of Tribune Broadcasting Company ("Tribune") filed on May 3, 1993. Tribune asks the Commission to clarify its Report and Order in MM Docket 92-259 that the "superstation exception" to retransmission consent contained in Section 76.64(b)(2) of the Rules of the Commission applies only to out-of-market transmissions of superstations' signals via satellite.^{1/}

1. WSBK-TV is an independent television station operating on UHF Television Channel 38. WSBK-TV has the television rights to broadcast certain of the Boston Red Sox baseball games and Boston Bruins hockey games. These broadcasts are extremely popular with

^{1/} Yankee Microwave, Inc. ("Yankee"), which transmits WSBK-TV's signal to cable systems in New England by point-to-point microwave, has also petitioned the Commission to reconsider the superstation exception to apply to microwave-fed superstations as well. WSBK-TV does not oppose Yankee's petition to the extent that it only exempts out-of-market cable systems from retransmission consent.

viewers and consistently draw high ratings. WSBK-TV also broadcasts popular syndicated programming such as off-network reruns of "Cheers." This program, which has just concluded its 11-year network first-run, is set in a Boston tavern and, thus, is especially popular in the Boston market.

2. As a consequence of its programming schedule, WSBK-TV's signal is carried not only on cable systems in its ADI, but is delivered by microwave and satellite to cable systems throughout New England, other parts of the United States as far away as Puerto Rico and Florida. WSBK-TV, therefore, is a "superstation" as defined in Section 76.64(c)(2). Unlike other stations that actively solicit carriage and promote their superstation status, WSBK-TV is entirely passive in this respect. WSBK-TV's signal is transmitted via satellite and microwave without its consent and, in some cases, without its knowledge. WSBK-TV receives no compensation for this carriage of its signal. It became a "superstation" not by design, but solely by virtue of the fact that it fits the definition set forth in Section 76.64(c)(2).

3. Tribune has fully and ably set out the legislative history of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act") in its Petition and WSBK-TV will not burden the record with another recitation of these facts. While, as Tribune notes at p. 2 of its Petition, it is not clear whether

consent rights is abundantly clear. In enacting the Cable Act, Congress found that cable systems "obtain great benefits from local broadcast signals which, until now, they have been able to obtain without the consent of the broadcaster or any copyright liability. This has resulted in an effective subsidy of the development of cable systems by local broadcasters." Cable Act, §2(a)(19). The Act at §§2(a)(9-11) notes the importance of local broadcast stations in serving the goals of §307(b) of the Communications Act of 1934, continuing to serve as a source of local programming and providing local news and public affairs programming critical to an informed electorate.

4. The Commission in its Report and Order and Further Notice of Proposed Rulemaking in MM Docket 92-266, FCC 93-177, released May 3, 1993, addressed the issue of differing treatment of superstations within and outside their local markets. Two commenters asked the Commission to clarify whether superstations were required to be carried on the basic service tier if the stations are received by microwave rather than satellite. The Commission determined that Congress had not intended for superstations to be required basic tier channels "outside of their local market coverage area." Id. at n. 416 (emphasis supplied). The Commission further noted that: "A superstation does not become a local broadcast station simply because the cable system receives it by microwave." Id. Conversely, a local broadcast station cannot become a superstation within its local market simply because the

in order to evade the requirement that it obtain retransmission consent from the local broadcaster.

5. WSBK-TV would be severely prejudiced by any finding that it is a superstation within its market. It is the only station in the Boston market that meets the superstation definition. Each of its competitors in the Boston market, therefore, would be able to obtain the benefits of retransmission consent while WSBK-TV, through no act of its own, would be denied this important and valuable right. Congress did not intend that local stations such as WJBK-TV lose retransmission consent rights because of the acts of others transmitting its signal to distant locations.

For the forgoing reasons, WSBK License, Inc. respectfully requests that the Commission clarify that commercial television stations are entitled to retransmission consent within their ADI or where the station would not be considered a distant signal as defined in Section 111 of the Copyright Act of 1976.

Respectfully Submitted,

WSBK LICENSE, INC.

By



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Its Attorneys

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June 7, 1993

CERTIFICATE OF SERVICE

I, Susan A. Burk, a secretary with the law firm of Pepper & Corazzini, do hereby certify that a true and correct copy of the foregoing Comments was served by U.S. mail, first-class, postage-
paid on the 7th day of June, 1999, on the following individual: